

# Guide for Investigating Misconduct and Processing Disciplinary/Adverse Actions

## Purpose

This guide is intended to provide an orderly process for investigating incidents involving possible employee misconduct and processing disciplinary actions for employees found to have engaged in employee misconduct. This guide applies to employees covered by Title 5 of the U.S. Code, however, the principles can be applied to any investigative situation. Through objective review and proper adjudication, management will be able to uphold the ethics and integrity of the agency and ensure that the efficiency of the Federal service is not compromised.

## Background

All employees are responsible for complying with the Department of Health and Human Service's Standards of Conduct, the Office of Government Ethics Standards of Conduct, ethics laws, agency policies, and other workplace rules. When employees fail to meet their obligations, misconduct may result.

Agency investigation of possible misconduct (excluding criminal misconduct<sup>1</sup> or scientific misconduct<sup>2</sup>) is referred to as an administrative inquiry. Employee misconduct that might trigger agency investigation includes: insubordination, tardiness, absenteeism, falsification (other than scientific in nature), misuse of agency resources, disruptive behavior, intoxication while on duty, sexual harassment, etc.

Research misconduct covered by this guidance may include: failure to follow the procedures described in the *CDC Human Subjects Manual*, publishing without following the *Authorship of CDC or ATSDR Publications* or the *Clearance Procedures for Scientific and Technical Documents*, and other related CDC scientific policies. Such cases are generally investigated and evidence compiled by supervisors with the assistance of an Employee Relations Specialist.

When supervisors initially discover possible employee misconduct, it is helpful to identify the specific offense(s) at issue. Administrative offenses often result from violations of the Standards of Conduct, violations of other directives, requirements, and agency policies.

---

<sup>1</sup> Cases involving possible criminal conduct should be referred to the Office of Inspector General. See HHS Chapter 5-10, General Administration Manual.

<sup>2</sup> Cases involving possible scientific misconduct (fabrication or falsification of research data, results, or methodology or plagiarism) should be referred to the CDC Research Integrity Officer. See the Office of Research Integrity Regulations, *General Procedures for Dealing with Possible Scientific Misconduct in Public Health Service Intramural Research*; 42 CFR Part 50, Subpart A.

Action should be taken if it can be established that the conduct was inappropriate and that it impacted on the “efficiency of the service.” In other words, that the misconduct interfered with the agency’s mission. This principle is also referred to as “nexus.”

Incidents of misconduct may come to the attention of management in a variety of ways. Supervisors may directly observe misconduct, may have misconduct reported to them by another employee or supervisor, or may receive some physical evidence that an employee has engaged in misconduct. It is in the best interest of the agency and all employees for investigations and subsequent actions (if appropriate) to be processed in a timely manner. While the agency has not set a specific timetable for action, management must keep in mind that the longer it takes to correct, the more at risk the agency is for being subjected to further employee misconduct. Additionally, in the event a formal disciplinary action is taken, third parties have found that an employee’s ability to respond to the charges may be diminished if too much time has passed and the action could be overturned if challenged.

Under the HHS Standards of Conduct, an employee who has information he or she reasonably believes indicates the existence of an activity constituting (1) possible violation of a rule or regulation of the Department or (2) mismanagement, a gross waste of funds, or abuse of authority; or (3) a substantial and specific danger to the public health and safety, is required to immediately report such information to his or her supervisor, any management official of the Department, or directly to the Office of the Inspector General. Failure to do so could result in disciplinary action. Also under the Standards of Conduct is an acknowledgment that if a supervisor fails to initiate disciplinary or corrective action when the facts are known and disciplinary or corrective action is warranted, that supervisor can be disciplined.

Once such information is provided to management, it is management’s responsibility to ensure that the alleged offending employee’s management chain be apprised so that they can take appropriate action.

## References

HHS Supplemental Standards of Conduct

Delegation of Authority to Issue Official Reprimands Under HHS Personnel Instruction 751-1

Delegations of Authority to Propose and Decide on Adverse Actions Under HHS Personnel Instruction 752-1 (ATSDR and CDC)

---

*Douglas v. Veterans Administration*, 5 MSPR 280, 5 MSPB 313 (1981)  
*Hillen v. Department of Army*, 35 MSPR 453 (1987)

5 CFR Part 752

Employee Use of CDC/ATSDR Information Technology Resources  
Policy

CDC/ATSDR Policy on Preventing Violence and Threatening Behavior  
in the Federal Workplace

Sexual Harassment Policy Statement

Applicable Collective Bargaining Agreement

Clearance Procedures for Scientific and Technical Documents

Authorship of CDC or ATSDR Publications

## **Responsibilities**

**Assistant Administrator, ATSDR:** Serves as the deciding official for disciplinary suspensions (suspensions 14 calendar days or less) for employees in ATSDR. Serves as the proposing official for adverse actions (i.e., suspensions more than 14 calendar days, demotions for cause and removals) for employees in ATSDR.

**Associate Director for Management and Operations (ADMO)/CDC:** Serves as the deciding official for adverse actions (i.e., suspensions more than 14 calendar days, demotions for cause and removals) for CDC employees.

**Associate Director for Science (ADS)/CDC:** Investigates claims of scientific misconduct and recommends action based on evidence obtained. If the allegation involves human subjects protection, the relevant Institutional Review Board (IRB) may also be included in the investigation. Serves as the CDC Research Integrity Officer.

**CIO Associate Director for Science:** May investigate claims of scientific misconduct for employees in their organization. Communicates as needed with CDC ADS.

**CIO Directors:** Serves as the deciding official for disciplinary suspensions (14 days or less). Serves as the proposing official for adverse actions (i.e., suspensions more than 14 calendar days, demotions for cause and removals) for employees in their organization.

**Deputy Administrator, ATSDR:** Serves as the deciding official for adverse actions (i.e., suspensions more than 14 calendar days, demotions for cause and removals) for ATSDR employees.

**Employee Relations Specialist, Human Resources Management Office (HRMO):** Consults and advises all levels of management on issues related to the disciplinary/adverse action process. Additional responsibilities include: assessing and analyzing evidence, advising management on appropriate action, preparing disciplinary/adverse action letters, ensuring that evidence exists to support action taken, and informing the generalist or relevant personnel servicing team of pending action. Serves as a classroom instructor for management classes involving range of employee relations issues.

**Immediate Supervisors:** Investigates claims of misconduct of employees under their supervision and recommends action based on evidence obtained. Communicates as needed with upper management during the processing of disciplinary or adverse action. Has the authority to issue official reprimands for employees under their supervision.

**Information Resources Management staff in CIO/IRMO:** Assists management as needed in the accumulation of appropriate evidence with respect to misconduct that may violate the agency's Policy Governing Use of CDC IT Resources. Such accumulation of evidence shall be conducted in accordance with procedures described in the CDC policy "Employee Use of CDC Information Technology Resources."

**Office of the General Counsel:** Consults and provides advice to management and HRMO officials on matters involving legal issues. Serves as the agency's representative in adverse action appeals.

**Personnel Generalist:** Works in a collaborative manner with the Employee Relations Specialist to provide guidance to management during the process. For field sites, Personnel Generalists may be more involved.

## Procedures

### Steps in Conducting an Effective Investigation

1. Report of alleged misconduct is directly observed or received by manager or management official. Depending on the nature of the matter being reported, it may be necessary to obtain a written statement from the observer before proceeding further with an investigation.

2. If the manager or management official who receives the report of alleged misconduct is **not** within the chain of command of the potential offending employee, that person promptly provides that information to a manager within that person's chain of command.
3. Management discusses the situation with an Employee Relations Specialist.
4. Available evidence is assessed and, as needed, the Employee Relations Specialist assists management in compiling additional evidence. (See p. 5-31 for "Guidelines for Conducting an Effective Investigation.") If confronted with credibility issues, the Hillen Factors (p. 5-36) should be applied to resolve conflicts in testimony.
5. Management is assisted by the Employee Relations Specialist in making the determination if an action is appropriate, including the identification of misconduct and nexus (efficiency of the service standard).

#### **Processing Disciplinary/Adverse Actions**

1. Management is assisted by the Employee Relations Specialist in selection of an appropriate disciplinary action where warranted. The *Douglas* Factors (p. 5-37) are considered.
2. Management is assisted by the Employee Relations Specialist to determine if special requirements or action is necessary (e.g., reasonable accommodation, EAP referral, specific leave entitlement, etc.).
3. The Employee Relations Specialist writes the proposal letter and establishes the evidence file.
4. Management ensures delivery and receipt of letter.
5. The Employee Relations Specialist coordinates the oral reply and responds to requests for evidence.
6. The Employee Relations Specialist ensures consideration of replies and writes the decision letter. For adverse actions, the Employee Relations Specialist ensures consideration of the *Douglas* Factors by the deciding official.
7. An attorney from the Office of the General Counsel typically serves as the official Agency Representative in adverse action appeals with assistance from the Employee Relations Specialist.

## **1. Types of informal actions**

a. *Verbal counseling.* Verbal counseling alone is appropriate when dealing with the most minor of misconduct that has not been repeated and that has limited and minimal impact on the efficiency of the agency. Generally speaking, an employee should not be repeatedly counseled verbally on the same misconduct, i.e., a written counseling and/or formal disciplinary action should be considered.

b. *Written counseling.* An informal memo from the immediate supervisor, or another management official within the employee's chain of command, that identifies a specific behavior in need of correcting and gives the employee instruction on how to correct same behavior. A memo of this nature would not be filed in the employee's Official Personnel Folder (OPF). Usually an original of such document will be provided to the employee and the immediate supervisor would retain a copy. The retention period for such a document would be at the supervisor's discretion. If behavior continues and formal disciplinary action is pursued, written counseling memoranda could form part of the evidentiary file.

## **2. Types of formal disciplinary actions**

a. *Reprimand.* A written letter to the employee identifying the misconduct and instructing the employee to correct the behavior. A copy of the reprimand is filed in the employee's official personnel folder (OPF) for two years. This action is grievable.

b. *Disciplinary suspension.* A suspension of fourteen calendar days or less. A suspension is a non-pay, non-duty status for the employee. SF-50's documenting the suspension are permanently filed in the employee's Official Personnel Folder. This action is grievable.

c. *Adverse action suspension.* Same as a disciplinary suspension but is for more than fourteen calendar days. This action is appealable to the Merit Systems Protection Board.

d. *Demotion.* Change to a lower grade for cause. This action is appealable to the Merit Systems Protection Board. (Note: Change to lower grade as a result of a classification action is not considered a demotion for disciplinary reasons.)



e. *Removal.* Removal of a non-probationary period employee from the Federal government. This action is appealable to the Merit Systems Protection Board.

For items b. through e., employees are provided a proposal notice, a notice period, an opportunity to reply in writing and in person, an opportunity to be represented during the oral reply, copies of the evidence if requested, and a written decision.

**The CIO's servicing Employee Relations Specialist must be involved in all formal disciplinary actions to provide technical guidance.**

**Special note:** The strength of the evidence determines whether or not **any** action is appropriate; the seriousness of the offense determines **what** action is appropriate.

For privacy reasons, issues related to reporting and investigating possible misconduct should only be discussed with those persons who have an official "need to know" and should **not** be discussed with anyone else. Typically, those who "need to know" will be management officials who are involved in the matter and have a need for the information in the performance of their official duties. Sharing of information with unauthorized persons is a violation of Departmental Standards of Conduct.